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CERTIFICATE OF SERVICE OF COMPLAINT ON UNITED STATES EPA AND DOJ

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**DJ#:**

**Case Name:**

**Court:** CA E.D. Cal.; 9th Cir.

**Notes:** SCANNED/UNASSIGNED

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CALIFORNIA RIVER WATCH  
10

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a  
501(c)(3), nonprofit, public benefit  
14 Corporation,

15 Plaintiff,

16 v.

17 OXBOW MARINA,

18 Defendant.  
19 \_\_\_\_\_/

CASE NO.: 2:14-cv-00045-KJM-CKD

**CERTIFICATE OF SERVICE OF  
COMPLAINT ON UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY AND UNITED STATES  
DEPARTMENT OF JUSTICE**

28 //

1 CERTIFICATE OF SERVICE

2 I am employed in the County of Sonoma, State of California. I am over the age of  
3 eighteen years and not a party to the within action. My business address is 100 E Street, Suite  
4 318, Santa Rosa, CA 95404. On the date set forth below, I served the following described  
5 document(s):

6 **COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF, CIVIL  
7 PENALTIES, RESTITUTION AND REMEDIATION (Environmental - Clean  
8 Water Act 33 U.S.C. § 1251, et seq)**

9 on the following parties by placing a true copy in a sealed envelope, addressed as follows:

10 Citizen Suit Coordinator  
11 U.S. Dept. of Justice  
12 Environmental & Natural Resource Division  
13 Law and Policy Section  
14 P.O. Box 7415  
15 Ben Franklin Station  
16 Washington, DC 20044-7415

17 Administrator  
18 U.S. Environmental Protection Agency  
19 Ariel Rios Building  
20 1200 Pennsylvania Avenue, N.W.  
21 Washington, D.C. 20460

22 [X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class  
23 mail, for collection and mailing at Santa Rosa, California, following ordinary business practices.  
24 I am readily familiar with the practices of Law Office of Jack Silver for processing of  
25 correspondence; said practice being that in the ordinary course of business, correspondence is  
26 deposited with the United States Postal Service the same day as it is placed for processing.

27 [ ] (BY FACSIMILE) I caused the above referenced document(s) to be transmitted by Facsimile  
28 machine (FAX) 707-528-8675 to the number indicated after the address(es) noted above.

19 I declare under penalty of perjury, under the laws of the State of California, that the  
20 foregoing is true and correct, and that this declaration was executed on January 10, 2014 at Santa  
21 Rosa, California.

22 Wojciech P. Makowski  
23 Wojciech P. Makowski  
24  
25  
26  
27  
28

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9 Attorneys for Plaintiff  
CALIFORNIA RIVER WATCH

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA RIVER WATCH, a  
501(c)(3), nonprofit, public benefit  
14 Corporation,  
Plaintiff

Case No.:

**COMPLAINT FOR INJUNCTIVE RELIEF,  
CIVIL PENALTIES,  
RESTITUTION AND REMEDIATION**

15 v.

16 OXBOW MARINA and DOES 1-10,  
17 Inclusive,

(Environmental - Clean Water Act  
33 U.S.C. § 1251 *et seq.*)

18 Defendants.  
19 \_\_\_\_\_/

20 NOW COMES Plaintiff, CALIFORNIA RIVER WATCH (hereafter, "RIVER  
21 WATCH"), by and through its attorneys, and for its Complaint against Defendants, OXBOW  
22 MARINA and DOES 1-10, Inclusive, (hereafter, "OXBOW MARINA") states as follows:

23 **I. INTRODUCTION**

24 1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water  
25 Pollution Control Act, also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. § 1251  
26 *et seq.*, CWA § 505, including 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to  
27 prevent OXBOW MARINA from repeated and ongoing violations of the CWA. These violations  
28 are detailed in the "Supplemental Notice of Violations and Intent to File Suit" dated October 25,

1 2013, made part of the pleadings of this case, and attached hereto as EXHIBIT A (hereafter,  
2 "CWA NOTICE").

3 2. RIVER WATCH alleges OXBOW MARINA illegally discharges pollutants including,  
4 but not limited to, petroleum hydrocarbons, oil and grease, anti-freeze, solvents, paints, toxic  
5 metals (including copper, zinc, aluminum, iron, and lead), soaps, sediment, biodegradable  
6 organic matter, sanitary waste, bacteria, grey water, bilge water and organics, from its marina  
7 activities. RIVER WATCH alleges OXBOW MARINA has no individual facility National  
8 Pollutant Discharge Elimination System ("NPDES") permit for these discharges, and has failed  
9 and is failing to apply for coverage and comply with the terms of the California General  
10 Industrial Storm Water Permit for Industrial Storm Water Discharges, NPDES General Permit  
11 No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ  
12 (as amended by Water Quality Order 97-03-DWQ) issued pursuant to CWA § 402(p), 33 U.S.C.  
13 § 1342(p) (hereafter, "General Permit"). RIVER WATCH alleges that these discharges are in  
14 violation of the CWA's prohibition with regard to discharging a pollutant from a point source  
15 to waters of the United States, in this instance Georgiana Slough, pursuant to CWA § 301(a), 33  
16 U.S.C. § 1311(a) and 33 U.S.C. 1365(f).

17 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,  
18 the imposition of civil penalties, and other relief for OXBOW MARINA's violations as set forth  
19 in this Complaint.

## 20 **II. PARTIES TO THE ACTION**

21 4. PLAINTIFF, CALIFORNIA RIVER WATCH, is an Internal Revenue Service Code §  
22 501(c)(3), nonprofit, public benefit corporation duly organized under the laws of the State of  
23 California, located at 290 South Main Street, #817, Sebastopol, California. The specific purpose  
24 of RIVER WATCH is to protect, enhance and help restore surface and ground waters of  
25 California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated  
26 environs, biota, flora and fauna, and to educate the public concerning environmental issues  
27 associated with these environs.

28 5. Members of RIVER WATCH reside in northern California where the OXBOW MARINA

1 facilities which are the subject of this Complaint are located. Said members have interests in the  
2 waters and watersheds which are or may be adversely affected by OXBOW MARINA's  
3 discharges and violations as alleged herein. Said members use the effected waters and watershed  
4 areas for domestic water, recreation, sports, fishing, swimming, hiking, photography, nature  
5 walks and/or the like. Furthermore, the relief sought will redress the injury in fact, likelihood  
6 of future injury and interference with the interests of said members.

7 6. RIVER WATCH is informed and believes, and on such information and belief alleges,  
8 that Defendant OXBOW MARINA is a private marine facility business located and operating  
9 at 100 Oxbow Marina Drive in the City of Isleton, Sacramento County, California.

10 7. RIVER WATCH is informed and believes and on such information and belief alleges that  
11 Defendants DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and  
12 entities, who are, or were, responsible for, or in some way contributed to, the violations which  
13 are the subject of this Complaint or are, or were, responsible for the maintenance, supervision,  
14 management, operations, or insurance coverage of the OXBOW MARINA facilities and  
15 operations as identified in the CWA NOTICE and this Complaint. The names, identities,  
16 capacities, and functions of defendants DOES 1 - 10, Inclusive, are presently unknown to  
17 RIVER WATCH. RIVER WATCH shall seek leave of court to amend this Complaint to insert  
18 the true names of said DOES defendants when the same have been ascertained.

19 **III. GENERAL ALLEGATIONS**

20 8. Operations at the OXBOW MARINA facilities (classified in the General Permit under  
21 "Water Transportation Facilities That Have Vehicle (Vessel) & Equipment Maintenance Shops  
22 And/Or Equipment Cleaning Operations" under Standard Industrial Code 4493) include, but are  
23 not limited to: "boat berths," "Nordic Marine Mechanic Services," "gas and diesel fuel dock,"  
24 "free pumpout stations," "general store and snack bar," and "Delta Yacht Brokerage"  
25 (<http://www.oxbowmarina.com>; December 26, 2013). Due to spills, over topping and general  
26 use, petroleum hydrocarbons are being discharged from the OXBOW MARINA gas and diesel  
27 fuel dock to Georgiana Slough. In addition, OXBOW MARINA advertises and promotes the  
28 on-site services of independent contractors who are allowed to conduct boat repair and

1 maintenance work for OXBOW MARINA lessees in the OXBOW MARINA boat berths over  
2 which OXBOW MARINA maintains operational control. RIVER WATCH alleges that work  
3 performed by the independent contractors, as well as work performed by the permittees  
4 themselves, cause metals such as copper and zinc as well as other pollutants such as petroleum  
5 hydrocarbons to be directly discharged into Georgiana Slough from the boats. The U.S.  
6 Environmental Protection Agency ("EPA") states that "water transportation facilities that  
7 perform vessel and equipment fluid changes, mechanical repairs, parts cleaning, sanding,  
8 blasting, welding, refinishing, painting, fueling, vessel and vehicle exterior washdown" that are  
9 covered under Standard Industrial Code 4493, "require coverage under an industrial stormwater  
10 permit." (Page 1, "Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation  
11 Facilities" (EPA Office of Water, EPA-833-F-06-032, December 2006;  
12 [http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf); December 26, 2013). The  
13 EPA also specifically states that marinas are required to obtain a separate individual NPDES  
14 permit for discharges of bilge and ballast water, sanitary wastes, pressure wash water, and  
15 cooling water originating from vessels. These discharges are not covered under the General  
16 Permit. (Page 1, "Industrial Stormwater Fact Sheet Series, Sector Q:Water Transportation  
17 Facilities" cited above). Numerous boats at the OXBOW MARINA are not equipped with  
18 retention tanks for grey or bilge water. From these boats at the OXBOW MARINA grey and  
19 bilge water is discharged directly into Georgiana Slough. Grey water is known to contain  
20 organics and bacteria. Bilge water contains hydrocarbons, metals and other pollutants .

21 9. By law, OXBOW MARINA is required to regulate the activities conducted at its facilities  
22 in order to control the storm water and non-storm water discharge of pollutants into the  
23 navigable water of Georgiana Slough identified in the CWA NOTICE and herein. The CWA  
24 requires marinas to obtain and comply with the terms and conditions of an individual NPDES  
25 permit or seek coverage under the General Permit (or obtain exemption under the terms of the  
26 General Permit from its requirements). OXBOW MARINA has, as of the filing of this  
27 Complaint, failed to obtain any required permit coverage under the CWA or binding exemption  
28 from coverage under the CWA for the Isleton facilities.

1 **IV. JURISDICTIONAL ALLEGATIONS**

2 10. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public  
3 participation in the enforcement of the CWA. 33 U.S.C. § 1251(e) provides, in relevant part:

4 Public participation in the development, revision, and enforcement of any  
5 regulation, standard, effluent limitation, plan or program established by the  
6 Administrator or any State under this chapter shall be provided for, encouraged,  
7 and assisted by the Administrator and the States.

8 11. Subject matter jurisdiction is conferred upon this Court by CWA § 505(a)(1), 33 U.S.C.  
9 § 1365(a)(1), which states in relevant part,

10 “... any citizen may commence a civil action on his own behalf - against any  
11 person . . . who is alleged to be in violation of (A) an effluent standard or  
12 limitation. . . or (B) an order issued by the Administrator or a State with respect  
13 to such a standard or limitation ...”

14 For purposes of CWA § 505, “the term ‘citizen’ means a person or persons having an  
15 interest which is or may be adversely affected.” (33 U.S.C. § 1365(g)).

16 12. All illegal discharges and activities complained of in this Complaint and in the CWA  
17 NOTICE occur in Georgiana Slough, a water of the United States.

18 13. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods  
19 from, own property near, and/or recreate on, in or near, and/or otherwise use, enjoy and benefit  
20 from the waterway and associated natural resource into which OXBOW MARINA allegedly  
21 discharges pollutants, or by which its operations adversely affect those members’ interests, in  
22 violation of the protections embedded in the NPDES Permitting program and the General Permit,  
23 CWA § 301(a), 33 U.S.C. § 1311(a), CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), CWA § 402,  
24 and 33 U.S.C. § 1342. The health, economic, recreational, aesthetic and environmental interests  
25 of RIVER WATCH and its members may be, have been, are being, and will continue to be  
26 adversely affected by OXBOW MARINA’s unlawful violations as alleged herein. RIVER  
27 WATCH contends there exists an injury in fact to its members, causation of that injury by  
28 OXBOW MARINA’s complained of conduct, and a likelihood that the requested relief will  
redress that injury.

14. Pursuant to CWA § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), RIVER WATCH gave  
notice of the violations alleged in this Complaint more than sixty days prior to commencement

1 of this action, to: (a) OXBOW MARINA, (b) the United States EPA, Federal and Regional, and  
2 (c) the California State Water Resources Control Board and Regional Water Quality Control  
3 Board.

4 15. Pursuant to CWA § 505(c)(3), 33 U.S.C. § 1365(c)(3), a copy of this Complaint has  
5 been served on the United States Attorney General and the Administrator of the Federal EPA.

6 16. Pursuant to CWA § 505(c)(1), 33 U.S.C. § 1365(c)(1), venue lies in this District as the  
7 location of OXBOW MARINA's operations and facilities where illegal discharges occurred  
8 which are the source of the violations complained of in this action, are located within this  
9 District.

#### 10 **V. STATUTORY AND REGULATORY BACKGROUND**

11 17. CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a "point  
12 source" into the navigable waters of the United States, unless such discharge is in compliance  
13 with applicable effluent limitations as set by the EPA and the applicable State agency. These  
14 limits are to be incorporated into a NPDES permit for that specific point source. Additional sets  
15 of regulations are set forth in the Regional Water Quality Control Board Water Quality Control  
16 Plan or "Basin Plan", California Toxics Plan, the Code of Federal Regulation and other  
17 regulations promulgated by the EPA and the State Water Resources Control Board.

18 18. CWA § 301(a) prohibits discharges of pollutants or activities not authorized by, or in  
19 violation of an effluent standard or limitation or an order issued by the EPA or a State with  
20 respect to such a standard or limitation including a NPDES permit issued pursuant to CWA §  
21 402, 33 U.S.C. § 1342. The pollutants from the OXBOW MARINA facilities are discharged  
22 from point sources under the CWA.

23 19. The affected waterway detailed in this Complaint and in the CWA NOTICE is a  
24 navigable water of the United States within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7).

25 20. The Administrator of the EPA has authorized the Regional Water Quality Control Board  
26 to issue NPDES permits, subject to specified conditions and requirements, pursuant to CWA §  
27 402, 33 U.S.C. § 1342.

28 21. In addition to the general prohibition against the unpermitted discharge of pollutants from

1 a point source, CWA § 402(p), 33 U.S.C. § 1342 and 40 C.F.R. § 122.26 prohibits industrial  
2 storm water discharges without a permit. For storm water discharges allowed under CWA §  
3 402(p), California's General Permit requires all facilities that discharge storm water associated  
4 with industrial activity to develop and implement a Storm Water Pollution Prevention Plan  
5 ("SWPPP"). RIVER WATCH alleges OXBOW MARINA has not fully developed and/or  
6 adequately implemented a SWPPP for its operations, as evidenced by the fact that OXBOW  
7 MARINA has failed and is failing to prevent pollutants generated at the OXBOW MARINA  
8 facilities from entering storm water runoff from the facilities.

9 **VI. VIOLATIONS**

10 22. The enumerated violations are detailed in the CWA NOTICE and below, designating the  
11 section of the CWA violated by the described activity.

12 23. The location(s) of the discharges are the discharge points as described in the CWA  
13 NOTICE.

14 **VII. FIRST CLAIM FOR RELIEF**

15 **Violation of 33 U.S.C. § 1311(a), CWA § 301(a) – Violation of the Prohibition on the**  
16 **Discharge of Pollutants from Point Sources to Waters of the United States Without a**  
**NPDES Permit Issued Under CWA § 402, 33 U.S.C. § 1342**

17 RIVER WATCH re-alleges and incorporates by reference the allegations of Paragraphs  
18 1 through 23 as though fully set forth herein including all allegations in the CWA NOTICE.  
19 RIVER WATCH is informed and believes, and on such information and belief alleges, as  
20 follows:

21 24. OXBOW MARINA has violated and continues to violate the CWA as evidenced by the  
22 discharge of pollutants from vessels located in the OXBOW MARINA boat berths and other  
23 point sources including but not limited to the sources identified by the EPA in its industrial fact  
24 sheet covering marinas (*see* EPA-833-F-06-032 at  
25 [http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf)), to navigable waters of the  
26 United States without a NPDES permit, as set forth in Paragraph 8 and 9 of this Complaint and  
27 the CWA NOTICE, in violation of CWA § 301, 33 U.S.C. § 1311.

28 25. OXBOW MARINA's violations are ongoing, and will continue after the filing of this

1 Complaint. RIVER WATCH alleges herein all violations which may have occurred or will  
2 occur prior to trial, but for which data may not have been available or submitted or apparent  
3 from the face of the reports or data submitted by OXBOW MARINA to the State Water  
4 Resources Control Board, the Regional Water Quality Control Board, or to RIVER WATCH  
5 prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary  
6 to address OXBOW MARINA's State and Federal CWA violations which may occur after the  
7 filing of this Complaint. Each violation is a separate violation of the CWA.

8 26. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the  
9 issuance of appropriate equitable relief, OXBOW MARINA will continue to violate the CWA  
10 as well as State and Federal standards with respect to the enumerated discharges and releases  
11 alleged herein. Further, that the relief requested in this Complaint will redress the injury to  
12 RIVER WATCH and its members, prevent future injury, and protect the interests of its members  
13 that are or may be adversely affected by OXBOW MARINA's violations of the CWA, as well  
14 as other State and Federal standards.

15 27. RIVER WATCH alleges that continuing violations of the CWA by OXBOW MARINA  
16 will irreparably harm RIVER WATCH and its members, for which harm RIVER WATCH and  
17 its members have no plain, speedy or adequate remedy at law.

#### 18 **VIII. SECOND CLAIM FOR RELIEF**

##### 19 **Violation of CWA § 402(p), 33 U.S.C. § 1342(p) – Failure to Comply with the Regulations** 20 **Setting Forth the Permit Application Requirements for Stormwater Discharges for** **Industrial Discharge**

21 RIVER WATCH re-alleges and incorporates by reference the allegations of Paragraphs  
22 1 through 27 as though fully set forth herein including all allegations in the CWA NOTICE.  
23 RIVER WATCH is informed and believes, and on such information and belief alleges, as  
24 follows:

25 28. The CWA requires that a discharger involved with industrial activity obtain a NPDES  
26 permit. CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B). OXBOW MARINA has neither  
27 applied for coverage under the General Permit nor received a separate NPDES permit for its  
28 industrial discharges as required by the CWA. OXBOW MARINA has violated and continues

1 to violate the CWA as evidenced by its failure to comply with the regulations setting forth the  
2 permit application requirements for stormwater discharges from industrial facilities.

3 29. As described in the CWA NOTICE and herein pursuant to CWA § 402(p), 33 U.S.C. §  
4 1342(p), and 40 C.F.R. § 122.26, RIVER WATCH alleges OXBOW MARINA to be in  
5 violation of an effluent standard or limitation under the CWA and/or an order issued by the State  
6 with respect to such standard or limitation.

7 30. By law and by the terms of the General Permit, violations of California's General Permit  
8 are violations of the CWA. (40 C.F.R. § 122.41(a)).

9 31. OXBOW MARINA's violations are ongoing, and will continue after the filing of this  
10 Complaint. RIVER WATCH alleges herein all violations which may have occurred or will  
11 occur prior to trial, but for which data may not have been available or submitted or apparent  
12 from the face of the reports or data submitted by OXBOW MARINA to the State Water  
13 Resources Control Board, the Regional Water Quality Control Board, or to RIVER WATCH  
14 prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary  
15 to address OXBOW MARINA's State and Federal violations of California's General Permit  
16 which may occur after the filing of this Complaint. Each of OXBOW MARINA's violations in  
17 excess of State and Federal standards has been and is a separate violation of the CWA.

18 32. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the  
19 issuance of appropriate equitable relief, OXBOW MARINA will continue to violate the General  
20 Permit as well as State and Federal standards with respect to the enumerated discharges and  
21 releases alleged herein and described in the CWA NOTICE. Further, that the relief requested  
22 in this Complaint will redress the injury to RIVER WATCH and its members, prevent future  
23 injury, and protect the interests of its members that are or may be adversely affected by OXBOW  
24 MARINA's violations of the General Permit.

25 33. RIVER WATCH alleges that continuing violations of the CWA by OXBOW MARINA  
26 at its Isleton facilities will irreparably harm RIVER WATCH and its members, for which harm  
27 RIVER WATCH and its members have no plain, speedy or adequate remedy at law.

28 //

**IX. RELIEF REQUESTED**

WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

34. Declare OXBOW MARINA to have violated and to be in violation of the CWA;

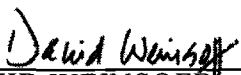
35. Issue an injunction ordering OXBOW MARINA to immediately operate its facilities in compliance with the NPDES permitting requirements in the CWA;

36. Order OXBOW MARINA to pay civil penalties per violation/per day for its violations of the CWA as alleged in this Complaint;

37. Order OXBOW MARINA to pay RIVER WATCH's reasonable attorneys' fees and costs (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California law; and,

38. Grant such other and further relief as may be just and proper.

DATED: January 8, 2014

  
\_\_\_\_\_  
DAVID WEINSOFF  
Attorney for Plaintiff  
CALIFORNIA RIVER WATCH

# EXHIBIT A

LAW OFFICE OF  
DAVID J. WEINSOFF  
138 Ridgeway Avenue  
Fairfax, California 94930  
tel. 415•460•9760 fax. 415•460•9762  
weinsoff@ix.netcom.com

***Via Certified Mailing - Return Receipt***

October 25, 2013

Kipling T. Korth, Owner  
Jim Deak, General Manager  
Warren Wynant, Harbormaster  
Oxbow Marina  
100 Oxbow Marina Drive  
Isleton, CA 95641

**Re: Supplemental Notice of Violations and Intent to File Suit Under the  
Federal Water Pollution Control Act ("Clean Water Act")**

Dear Owner, Operator, and Site Manager :

**NOTICE**

This Supplemental Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the Oxbow Marina located at 100 Oxbow Marina Drive in Isleton, California. Notice is being sent to you as the responsible owners, operators or managers of this facility. This Supplemental Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit and unlawful discharge of pollutants from the Oxbow Marina into Georgiana Slough.

CWA § 505(b) requires that 60 days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the CWA, this Supplemental Notice provides notice of the violations that have occurred, and continue to occur at the Oxbow Marina facility. Consequently, Oxbow Marina (the "Discharger") is placed on formal notice by River Watch, that after the expiration of sixty (60) days from the date of this Supplemental Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations and the Central Valley Regional Water Quality Control Board (5S) Water Quality Control Plan or "Basin Plan".

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

Based on information thus far received, River Watch believes pollutants are discharged from marina activities at the Oxbow Marina site including, but not limited to, petroleum hydrocarbons, oil and grease, anti-freeze, solvents, paints, toxic metals (including copper, zinc, aluminum, iron, and lead), soaps, sediment, biodegradable organic matter, sanitary waste, bacteria, grey water and organics. River Watch contends the Discharger has no individual facility NPDES permit for these discharges, and has failed and is failing to apply for coverage and comply with the General Industrial Storm Water Permit, NPDES Permit No. CA S000001, State Water Resources Control Board, Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ ("General Permit"). These discharges are in violation of the CWA's prohibition with regard to discharging a pollutant from a point source to waters of the United States, in this instance Georgiana Slough, pursuant to CWA § 301(a), 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f).

Without obtaining coverage under, and complying with the terms of, the General Permit, the Discharger has failed to prepare and implement a Storm Water Pollution Prevention Plan ("SWPPP,"), failed to develop and implement a Monitoring and Reporting Program, and failed to implement Best Available Technology Economically Achievable ("BAT") and Best Conventional Pollutant Control Technology ("BCT") to control the discharge of pollutants in storm water at the Oxbow Marina facility. These violations will continue until the Discharger submits a Notice of Intent to obtain coverage under the General Permit, implements a SWPPP and Monitoring and Reporting Program, and demonstrates following sampling and testing after storm events, that its

implementation of Best Management Practices (“BMPs”) is effectively controlling storm water and non-storm water discharges from the Oxbow Marina site.

2. *The activity alleged to constitute a violation.*

Operations at the Discharger’s facility (classified in the General Permit under “Water Transportation Facilities That Have Vehicle (Vessel) & Equipment Maintenance Shops And/Or Equipment Cleaning Operations” under SIC 4493<sup>1</sup> include, but are not limited to: “boat berths,” “Nordic Marine Mechanic Services,” “gas and diesel fuel dock,” “free pumpout stations,” “general store and snack bar,” and “Delta Yacht Brokerage” (<http://www.oxbowmarina.com>; October 21, 2013). In addition, the Discharger advertises and promotes the on-site services of independent contractors allowed to conduct boat repair and maintenance work for Oxbow Marina lessees in the Oxbow Marina boat slips over which the Discharger maintains operation and control. The EPA has specifically asserted that “water transportation facilities that perform vessel and equipment fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding, refinishing, painting fueling, vessel and vehicle exterior washdown” that are covered under SIC 4493, “require coverage under an industrial stormwater permit.” (Page 1, “Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities” (EPA Office of Water, EPA - 833 - F - 06 - 032, December 2006; [http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf); October 21, 2013)). The EPA also specifically states that marinas are required to obtain a separate individual NPDES permit for discharges of bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels. These discharges are not covered under the General Permit. (Page 1, “Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities” cited above).

In sum, to properly regulate the activities conducted at the Oxbow Marina facility in order to control the storm and non-storm water discharge of pollutants into the navigable water of Georgiana Slough, the State Water Resources Control Board requires marinas to obtain and comply with the terms and conditions of an individual NPDES permit or seek coverage under the General Permit (or obtain exemption under the terms of the General Permit from its requirements). Review of the public record by River Watch does not reveal the Discharger having obtained any required permit coverage or exemption from coverage under the CWA for the Oxbow Marina facility.

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<sup>1</sup> SIC 4493 “Marinas” are “[e]stablishments primarily engaged in operating marinas. These establishments rent boat slips and store boats, and generally perform a range of other services including cleaning and incidental boat repair. They frequently sell food, fuel, and fishing supplies, and may sell boats.”

3. *The person or persons responsible for the alleged violation.*

The person responsible for the alleged violations referred to is Oxbow Marina including its owners and managers, identified herein as the Discharger.

4. *The location of the alleged violation.*

The locations of the point sources from which the pollutants identified in this Supplemental Notice are discharged in violation of the CWA is the permanent address of the Oxbow Marina facility at 100 Oxbow Marina Drive, in Isleton, California, including the adjoining waters of Georgiana Slough – a water of the United States.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

The range of dates covered by this Supplemental Notice is from October 25, 2008 to October 25, 2013. River Watch will from time to time further update this Supplemental Notice to include all violations which occur after the range of dates covered herein. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The entity giving notice is California River Watch, 290 S. Main Street, #817, Sebastopol, CA 95472 – a nonprofit corporation organized under the laws of the State of California, dedicated to protect, enhance and help restore the groundwater and surface water environs of California including, but not limited to, its rivers, creeks, streams, wetlands, vernal pools, and tributaries.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Supplemental Notice. All communications should be addressed to:

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## STATUTORY BACKGROUND

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States, unless such discharge is in compliance with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual NPDES permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342. CWA § 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. EPA has authorized California's State Water Resources Control Board to issue NPDES permits including general NPDES permits in California. The State Water Resources Control Board elected to issue a statewide general permit for industrial discharges, and issued the General Permit on or about November 19, 1991, modified the General Permit on or about September 17, 1992, and reissued the General Permit on or about April 17, 1997, pursuant to CWA § 402(p).

In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and complied with its terms.

The General Permit contains certain absolute prohibitions. Discharge Prohibition Order Section A(1) of the General Permit prohibits the direct or indirect discharge of materials other than storm water ("non-storm water discharges"), which are not otherwise regulated by a NPDES permit, to the waters of the United States. Discharge Prohibition Order Section A(2) prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation Order Section C(1) prohibits storm water discharges to any surface or ground water that adversely impact human health or the environment. Receiving Water Limitation Order Section C(2) prohibits storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Quality Control Board Basin Plan.

In addition to absolute prohibitions, the General Permit contains a variety of substantive and procedural requirements that dischargers must meet. Facilities discharging, or having the potential to discharge, storm water associated with industrial activity that have not obtained an individual NPDES permit must apply for coverage

under the General Permit by filing a Notice of Intent (“NOI”). The General Permit requires existing dischargers to file NOIs before March 30, 1992.

Dischargers must also develop and implement a SWPPP which must comply with the standards of BAT and BCT. The SWPPP must, among other requirements:

- Identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges [Permit Section A(2)]. BMPs must implement BAT and BCT [Permit Section B(3)].
- Include a description of individuals and their responsibilities for developing and implementing the SWPPP [Permit Section A(3)]; a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity [Permit Section A(4)]; a list of significant materials handled and stored at the site [Permit Section A(5)]; and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur [Permit Section A(6)].
- Include a narrative assessment of all industrial activities and potential pollutant sources at the facility [Permit Section A(7)].
- Include a narrative description of the BMPs to be implemented at the facility for each potential pollutant and its source, and consider both non-structural BMPs (including “Good Housekeeping”) and structural BMPs where non-structural BMPs are not effective [Permit Section A(8)].
- Conduct one comprehensive site compliance evaluation by the facility operator in each reporting period (July 1 – June 30), with SWPPP revisions made, as appropriate, and implemented within 90 days of the evaluation [Permit Section A(9)].

The General Permit requires dischargers to eliminate all non-storm water discharges to storm water conveyance systems other than those specifically set forth in Special Condition Order D(1)(a) of the General Permit and meeting each of the conditions set forth in Special Condition Order D(1)(b).

As part of their monitoring program, dischargers must identify all storm water discharge locations that produce a significant storm water discharge, evaluate the effectiveness of BMPs in reducing pollutant loading, and evaluate whether pollution control measures set out in the SWPPP are adequate and properly implemented. Dischargers must conduct visual observations of these discharge locations for at least one storm per month during the wet season (October through May) and record their findings in their Annual Report [Permit Section B(4)]. Dischargers must also collect and analyze storm water samples from at least two storms per year in compliance with the criteria set forth in Permit Section B(5). Dischargers must also conduct dry season visual observations to identify sources of non-storm water pollution in compliance with Permit Section B(3).

Permit Section B(14) of the General Permit requires dischargers to submit an "Annual Report" by July 1 of each year to the executive officer of the relevant Regional Water Quality Control Board. Permit Section A(9)(d) of the General Permit requires the discharger to include in the annual report an evaluation of the discharger's storm water controls, including certifying compliance with the General Permit. *See also* Permit Sections C(9), C(10) and B(14).

The EPA has established Parameter Benchmark Values as guidelines for determining whether a facility discharging storm water has implemented the requisite BAT and BCT. (65 Fed. Reg. 64746, 64767 (Oct. 30, 2000)). CTR limitations are also applicable to all non-storm water and storm water discharges. (40 C.F.R. part 131).

The Central Valley Regional Water Quality Control Board (5S) has established water quality standards for the Sacramento and San Joaquin River basins. This Basin Plan includes a narrative toxicity standard and a narrative oil and grease standard. The Basin Plan provides that "[w]aters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses." The Basin Plan establishes limits on metals, solvents, pesticides and other hydrocarbons.

## VIOLATIONS

River Watch contends that between October 25, 2008 and October 25, 2013 the Discharger violated the CWA, the Basin Plan and the Code of Federal Regulations by reason of discharging pollutants from the Oxbow Marina facility to waters of the United

States without an individual NPDES permit, without compliance with the General Permit, or in violation of the General Permit.

The violations discussed herein, impacting Georgiana Slough, are derived from eye witness reports and records publicly available, or from records in the possession and control of the Discharger. Furthermore, River Watch contends these violations are continuing. Halting the discharge of pollutants to this waterway is critical if it is to sustain both maritime and natural habitats for bird, animal, and plant life.

### **REMEDIAL MEASURES REQUESTED**

River Watch believes that implementation of the following remedial measures are necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts of its non-compliance upon public health and the environment surrounding the Oxbow Marina facility:

1. Prohibition of the discharges of all pollutants identified in the General Permit applicable to marina facilities, including aluminum, iron, lead, and zinc identified in Table D, petroleum hydrocarbons, oil and grease, anti-freeze, solvents, paints, soaps, and sediment; and prohibition of the discharges of all pollutants identified in a separate NPDES permit applicable to the Oxbow Marina, including “ballast water,” “black-water” and “grey-water” (sanitary waste), “pressure wash water,” “bilge-water,” and “cooling water.”
2. Compliance with the terms and conditions of the General Permit, and BMPs detailed in the EPA’s “Industrial Stormwater Fact Sheet Series, Sector Q: Water Transportation Facilities” (EPA Office of Water, EPA-833-F-06-032, December 2006; [http://www.epa.gov/npdes/pubs/sector\\_q\\_watertransportation.pdf](http://www.epa.gov/npdes/pubs/sector_q_watertransportation.pdf)).
3. Compliance with the storm water sampling, monitoring and reporting requirements of the General Permit, and the requirements imposed in any separate NPDES permit.
4. Sampling of storm water at least four (4) times per year over each of the next five (5) years: at “first flush”; the first significant rain after “first flush”; the first significant rain after April 1; and the second significant rain after April 1.
5. Preparation of an updated SWPPP including a monitoring program, with a copy provided to River Watch.

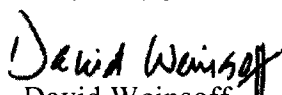
## CONCLUSION

CWA § 505(a)(1) and § 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1), § 1365(f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4.

The violations set forth in this Supplemental Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource are specifically impaired by the Discharger’s violations of the CWA as set forth in this Supplemental Notice.

River Watch believes this Supplemental Notice sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch has cause to file a citizen’s suit under CWA § 505(a) against the Discharger for the violations of the CWA identified and described in this Supplemental Notice. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations identified herein. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

  
David Weinsoff

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